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IN THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES L. TOLBERT
a/k/a JAMES TOLBERT BEY,

Defendant.

CV05-6041 R (EX)

Civil No.

**Complaint for Permanent
Injunction**

Plaintiff United States of America, for its complaint against defendant
James L. Tolbert a/k/a James Tolbert Bey, states as follows:

Jurisdiction and Venue

1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345
and the Internal Revenue Code (I.R.C.), 26 U.S.C., §§ 7402(a), 7407, and 7408.

Complaint for Permanent Injunction

United States v. James L. Tolbert

2. This suit is brought under I.R.C. §§ 7402, 7407, and 7408, to enjoin Tolbert permanently from:

(a) assisting in the preparation of federal tax returns that he knows will result in the understatement of any tax liability or the overstatement of federal tax refunds;

(b) acting as an income tax return preparer (as defined in I.R.C. § 7701(a)(36));

(c) organizing or selling abusive tax shelters, plans, or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of their correct federal tax;

(d) engaging in any activity subject to penalty under I.R.C. §§ 6700, 6701, 6694, 6695, or any other penalty provision in the Internal Revenue Code; and

(e) engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws and from promoting any false tax scheme.

3. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, under I.R.C. §§ 7402, 7407, and 7408.

4. On information and belief, Tolbert resides at 4433 Don Felipe Drive, Los Angeles, California, within this judicial district. Defendant is also known as James Tolbert Bey.

5. Venue is proper in this Court under 28 U.S.C. § 1391.

Defendant's Activities

6. Tolbert helps organize or promote a tax-fraud scheme by preparing federal income tax returns for customers falsely reporting no tax liability based on the frivolous position that the United States includes “only the District of Columbia and territories over which the Federal Government has exclusive jurisdiction.”

1 7. Tolbert advises his customers that the United States is a foreign country
2 in relation to California (or any other state), and that the customers are citizens of
3 California (or another state, if the customer resides elsewhere) and not of the
4 United States.

5 8. Tolbert falsely tell his customers that federal taxes withheld from their
6 earnings in California (or any other state) are being withheld by a foreign country,
7 which entitles the customers to a foreign earned income exclusion and reduces
8 their taxable income to zero.

9 9. Tolbert prepares IRS Form 2555, Foreign Earned Income, falsely
10 reporting that the customer spent the entire tax year living outside the United
11 States and that his or her income is therefore excludible from income on their
12 federal income tax return.

13 10. Tolbert then reports the customer's income on the tax return, but
14 improperly excludes all the income using IRS Form 2555, Foreign Earned Income,
15 and reduces the customer's income to zero.

16 11. Since at least 1999, the federal income tax returns Tolbert has prepared
17 for customers falsely claim zero taxable income and seek a refund of all federal
18 income tax withheld.

19 12. On information and belief, Tolbert charges each individual customer
20 money to prepare their returns.

21 13. Tolbert travels to other states for the purpose of preparing federal tax
22 returns and has prepared them for customers in California, Louisiana, Nevada,
23 North Carolina, Texas, Utah, and Virginia.

24 14. A one-page explanation of Tolbert's position that income earned in a
25 state is not taxable, is included in the tax returns prepared by Tolbert.

26 15. The net result of this arrangement is that the income tax returns
27 prepared by Tolbert for his customers falsely report no taxable income.

1 16. In the year following Tolbert's preparation of a customer's return, the
2 customer has little or no federal income tax withheld, and by the second year after
3 Tolbert prepares a customer's return, the customer ceases filing returns.

4 17. Tolbert also falsely or fraudulently advises his customers that American
5 citizens working in the United States need not file federal income tax returns
6 because "compensation for labor" is totally different in meaning and in law from
7 "income."

8 18. According to Tolbert, he prepares approximately 100 federal income
9 tax returns for customers per year and has been preparing returns claiming zero
10 taxable income using Form 2555, Foreign Earned Income, since 1999.

11 19. Tolbert fails to provide his social security number (SSN), or preparer
12 tax identification number (PTIN), or employer identification number (EIN) on
13 returns he prepares for customers.

14 20. Tolbert claims to have knowledge of the Internal Revenue Code and
15 trains others, including Michael Muhammad, a/k/a Michael Eugene Wall, a/k/a
16 Michael Muta Ali Muhammad, so that they can also prepare tax returns using
17 Form 2555, Foreign Earned Income, to reduce improperly the customer's taxable
18 income to zero.

19 21. On information and belief, Tolbert has taken classes in accounting at
20 various universities, has taken (but not passed) the CPA exam, and claims to have
21 been trained and participated in the IRS "Volunteer Income Tax Assistance"
22 (VITA) program.

23 22. Tolbert claims he will not prepare any tax return until the customer
24 studies the Internal Revenue Code (Code) with him and Tolbert feels confident
25 that the customer understands his view of the Code.

26 23. Tolbert states that he can teach the Code to a customer in 15 minutes.
27

24. Tolbert intends to continue to function as an income tax return preparer and promoter and insists on the viability of the position on which his tax-fraud scheme is based.

25. Despite being advised by the Internal Revenue Service that his conduct (including the specific activities described above in paragraphs 6 through 24) is subject to penalty and injunction, Tolbert has not stopped promoting his tax-fraud scheme or preparing false and fraudulent returns.

Harm to the Public

26. Tolbert's customers have been harmed by his promoting a tax-fraud scheme and preparing false and fraudulent tax returns, because his customers paid him money to prepare tax returns understating their income tax liabilities, resulting in audits of their returns; the assessment of tax, penalties, and interest; and the possibility of criminal prosecution.

27. The United States is harmed because Tolbert's customers are not paying the correct amount of tax to the United States Treasury. To date, of the over 210 returns found to have been prepared by Tolbert and filed by his customers for 1999 through 2002, the IRS selected for audit and examined 66 returns, resulting in the assertion of deficiencies exceeding \$951,000 in tax with a total potential tax revenue loss of \$2.1 million. Moreover, some of these audit deficiencies may never be collected, resulting in a permanent loss to the United States Treasury.

28. In addition, customers participating in Tolbert’s tax fraud scheme later cease filing tax returns altogether, forcing the IRS to divert its limited resources to investigate, conduct audits, and prepare substitute tax returns.

29. The United States is also harmed because the IRS is forced to devote resources to identify and recover this lost revenue from Tolbert's customers. Moreover, given the IRS's limited resources, identifying and recovering all revenues lost from Tolbert's scheme may be impossible.

30. In addition to the harm caused by his advice and services, Tolbert's activities undermine public confidence in the fairness of the federal tax system and promote non-compliance with the internal revenue laws.

Count I

Injunction under I.R.C. § 7407 for Violations of I.R.C. §§ 6694 and 6695

31. The United States incorporates by reference the allegations in paragraphs 1 through 30.

32. Section 7407 of the Internal Revenue Code authorizes a court to enjoin an income tax return preparer from:

- (a) engaging in conduct subject to penalty under I.R.C. § 6694 (which penalizes a tax return preparer who prepares or submits a return that contains an unrealistic position or who knew or reasonably should have known the position was not realistic and was frivolous),
- (b) engaging in conduct subject to penalty under I.R.C. § 6695 (which penalizes a return preparer who fails to furnish an identifying number of the income tax return preparer on a return as required by I.R.C. § 6109(a)(4)),
- (c) engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that injunctive relief is appropriate to prevent recurrence of such conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct and that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a federal income tax return preparer.

33. Tolbert is an income tax return preparer under I.R.C. § 7701(a)(36) because he prepares federal income tax returns for compensation and signs the returns as a paid preparer.

1 34. Tolbert prepares federal income tax returns claiming foreign earned
2 income exclusions for customers living within the United States and understates
3 their tax liability based on the false and fraudulent position that the United States
4 is a foreign country in relation to California (or other states), and taxes withheld
5 by a foreign country entitle taxpayers to a foreign earned income exclusion
6 thereby reducing their taxable income to zero.

7 35. Specific examples of the unrealistic position asserted by Tolbert in
8 preparing federal income tax returns include (but are not limited to) the following:

9 a. Tolbert prepared a federal income tax return for a California
10 customer which improperly excluded income using the foreign earned
11 income Form 2555, leaving the customer with an income tax deficiency of
12 more than \$97,000 plus interest and penalties.

13 b. Another California customer failed to file federal income tax
14 returns after having filed a return prepared by Tolbert. The IRS audited the
15 years for which no returns had been filed, and determined that the customer
16 had income tax deficiencies of more than \$120,000 (plus interest and
17 penalties).

18 36. Because of his experience and knowledge in tax matters, Tolbert knew
19 or should have known that the positions asserted on his customers' returns were
20 unrealistic within the meaning of I.R.C. § 6694.

21 37. Tolbert has engaged in other fraudulent and deceptive conduct that
22 substantially interferes with the proper administration of the internal revenue laws
23 within the meaning of I.R.C. § 6694, by training others how to prepare income tax
24 returns using a tax-fraud scheme to delay and obstruct the IRS.

25 38. Tolbert has engaged in other fraudulent and deceptive conduct that
26 substantially interferes with the proper administration of the internal revenue laws
27

1 within the meaning of I.R.C. § 6695, by failing to furnish an identifying number of
2 the income tax return preparer on a return as required by I.R.C. § 6109(a)(4).

3 39. Tolbert's actions, as described above, fall within I.R.C.
4 §§ 7407(b)(1)(A) and (D), and are thus subject to injunction under I.R.C. § 7407.

5 40. Tolbert should be permanently enjoined from acting as a federal income
6 tax return preparer because unless enjoined he is likely to continue to engage in
7 this unlawful conduct.

8 **Count II**

9 **Injunction under I.R.C. § 7408 for Violations 10 of I.R.C. §§ 6700 and 6701**

11 41. The United States incorporates by reference the allegations in
12 paragraphs 1 through 40.

13 42. Section 7408 of the Internal Revenue Code authorizes a court to enjoin
14 persons engaging in any conduct subject to penalty under §§ 6700 or 6701 of the
15 Code, or engaging in any other activity subject to penalty under the Code, if the
16 court finds that injunctive relief is appropriate to prevent recurrence of that
17 conduct.

18 43. Section 6700 of the Internal Revenue Code penalizes any person who
19 organizes, promotes, or sells a plan or arrangement and makes, in connection with
20 organizing or selling the plan or arrangement, a statement regarding the
21 excludibility of income or securing of other tax benefit that the person knows or
22 has reason to know is false or fraudulent as to any material matter.

23 44. Section 6701 of the Internal Revenue Code penalizes any person who
24 aids or assists in, procures, or advises with respect to the preparation or
25 presentation of a federal tax return, claim for refund, or other document while
26 knowing (or having a reason to believe) that the return, claim, or other document
27 will be used in connection with any material matter arising under the internal

1 revenue laws and if used, would result in an understatement of another's tax
2 liability.

3 45. Tolbert trains others to prepare income tax returns incorporating the
4 frivolous position that income earned in California (or another state), may be
5 excluded as foreign earned income. Those persons trained by Tolbert, in turn,
6 prepare income tax returns based on the same frivolous position. The statements
7 Tolbert makes in training others to prepare tax returns, are false or fraudulent
8 statements.

9 46. Tolbert knows or has reason to know that his tax fraud scheme contains
10 false or fraudulent statements within the meaning of I.R.C. § 6700.

11 47. Customers rely on Tolbert's false or fraudulent statements and file tax
12 returns substantially and materially understating their income based on Tolbert's
13 statements. Thereafter, the customers cease filing tax returns altogether.

14 48. By preparing income tax returns for his customers which improperly
15 claim exclusions from income and fail to report income based on this tax-fraud
16 scheme, Tolbert has engaged in preparing or presenting a portion of a tax return or
17 other document, knowing that such portion will be used in connection with a
18 material matter arising under the internal revenue laws, and knowing that such
19 portion (if so used), would result in understating the tax liability of another person.
20 Tolbert's conduct is thus subject to penalty under I.R.C. § 6701.

21 49. Unless enjoined by this court, Tolbert is likely to continue to engage in
22 such conduct. Injunctive relief is therefore appropriate under I.R.C. § 7408.

23 **Count III**

24 **Injunction under I.R.C. § 7402 for Unlawful Interference** 25 **with Enforcement of the Internal Revenue Laws** 26 **and Appropriateness of Injunctive Relief**

27 50. The United States incorporates by reference the allegations in
28 paragraphs 1 through 49.

1 51. Section 7402 of the Internal Revenue Code authorizes a court to issue
2 orders of injunction as may be necessary or appropriate for the enforcement of the
3 internal revenue laws.

4 52. Tolbert, through the actions described above, has engaged in conduct
5 that interferes substantially with the enforcement of the internal revenue laws.

6 53. If Tolbert is not enjoined, the United States will suffer irreparable harm
7 because the losses caused by Tolbert will continue to increase.

8 54. While the United States will suffer irreparable injury if Tolbert is not
9 enjoined, Tolbert will not be harmed by being compelled to obey the law.

10 55. The public interest would be advanced by enjoining Tolbert because an
11 injunction will stop his illegal conduct and the harm that conduct is causing to the
12 United States Treasury and the public.

13 56. If Tolbert is not enjoined, he is likely to continue to interfere with the
14 enforcement of the internal revenue laws.

15 WHEREFORE, the United States of America prays for the following relief:

16 A. That the Court find that Tolbert has engaged in conduct subject to
17 penalty under I.R.C. §§ 6700, 6701, 6694, and 6695, and that injunctive relief
18 under I.R.C. §§ 7407 and 7408 is necessary and appropriate to prevent a
19 recurrence of that conduct;

20 B. That the Court find that Tolbert has engaged in conduct interfering with
21 the enforcement of the internal revenue laws, and that injunctive relief is
22 appropriate to prevent the recurrence of that conduct pursuant to the Court's
23 inherent equity powers and I.R.C. § 7402(a);

24 C. That this Court, pursuant to I.R.C. § 7407, enter a permanent injunction
25 prohibiting Tolbert from acting as a federal income tax return preparer;

26 D. That this Court, pursuant to I.R.C. §§ 7402(a) and 7408, enter a
27 permanent injunction prohibiting Tolbert, individually and doing business under

1 any other name or using any other entity, and his representatives, agents, servants,
2 employees, attorneys, associates, and those persons in active concert or
3 participation with him, from directly or indirectly:

- 4 (1) Engaging in activity subject to penalty under I.R.C. § 6700, including
5 organizing or selling a plan or arrangement and making a statement
6 regarding the excludibility of income that he knows or has reason to
7 know is false or fraudulent as to any material matter;
- 8 (2) Engaging in activity subject to penalty under I.R.C. § 6701, including
9 preparing and/or assisting in the preparation of a document related to
10 a matter material to the internal revenue laws that includes a position
11 that he knows will result in an understatement of tax liability;
- 12 (3) Organizing, promoting, marketing, or selling any type of abusive tax
13 shelter, plan, or arrangement, including any asset protection device
14 such as trusts, limited liability corporations, or similar arrangements,
15 advocating noncompliance with the income tax laws or tax evasion,
16 misrepresenting the tax savings realized by using such an
17 arrangement or concealing the receipt of income or location of assets
18 from the IRS;
- 19 (4) Engaging in any other activity subject to penalty under the Internal
20 Revenue Code; and
- 21 (5) Engaging in other conduct interfering with the enforcement of the
22 internal revenue laws;

23 E. That this Court, pursuant to I.R.C. § 7402(a), enter an injunction
24 requiring Tolbert to contact by mail all persons for whom he has prepared tax
25 returns, to inform those persons of the Court's findings concerning the falsity of
26 Tolbert's representations and attach a copy of the permanent injunction against
27

1 Tolbert, and to file with the Court, within 30 days of the date the permanent
2 injunction is entered, a certification that he has done so;

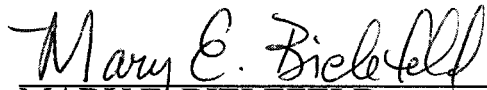
3 F. That this Court, pursuant to I.R.C. § 7402(a), enter an injunction
4 requiring Tolbert to produce to the United States, within 30 days of the date the
5 permanent injunction is entered, a list of the names, Social Security Numbers,
6 addresses, e-mail addresses, and telephone numbers of all persons for whom
7 Tolbert has prepared a federal tax return or who have purchased his tax-fraud
8 plans, arrangements, or programs, or any other tax shelter, plan, or program in
9 which Tolbert has been involved;

10 G. That this Court order that the United States is permitted to engage in
11 post-judgment discovery to ensure compliance with the permanent injunction; and
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1 H. That this Court grant the United States such other relief, including the
2 costs of this action, as is just and equitable.

3 Dated this 16th day of August, 2005.

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